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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0971

In the Matter of the Welfare of the Children of:
L. J. M., Parent.

Filed November 19, 2018
Affirmed
Bratvold, Judge

Anoka County District Court
File No. 02-JV-17-1341

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Considered and decided by Jesson, Presiding Judge; Bratvold, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant challenges the termination of her parental rights, arguing that the district court abused its discretion because termination is not in the children's best interests. Because the district court adequately considered the children's preferences and did not abuse its discretion in finding that termination is in the children's best interests, we affirm.

FACTS

Appellant L.J.M. is the maternal grandmother of D.M. (born in 2007) and N.M. (born in 2008), whose birth mother is B.M. The county removed the children from B.M.'s care in June 2013 because of B.M.'s drug use and failure to provide for the children's special needs, and because they were exposed to domestic violence. B.M. voluntarily terminated her parental rights in June 2014. The children were placed with L.J.M. after removal, and L.J.M. adopted D.M. and N.M. in June 2015.

Both children have special needs. D.M.'s medical providers have diagnosed him with attention deficient hyperactivity disorder (ADHD), oppositional defiant disorder, adjustment disorder, post-traumatic stress disorder, and emotional-behavior disorders, which result in displays of aggression and "suicidality." D.M. has an individualized education plan (IEP), and receives special education programming for his emotional-behavioral disorders. D.M. has also participated in individual therapy "off and on" to work on "emotional regulation" and process trauma.

N.M. has Saethre-Chotzen Syndrome, a genetic condition associated with premature closure of the skull. N.M.'s condition resulted in vision and hearing problems, and she

"developed seizures at one point from increased intracranial pressure." N.M. also has arthritis and "speech difficulty" due to "a submucosal cleft of the palate." N.M. has undergone several surgeries and receives regular medical care. She also has developmental delays, and has an IEP. N.M. needs occupational, speech, and physical therapy. N.M. also needs assistance with daily activities, including eating, getting dressed, and going to the bathroom.

In August 2015, respondent Anoka County Department of Community Social Services (the county) received a report from the University of Minnesota Medical Center, where N.M. received medical treatment. According to the report, hospital staff found "bottles of alcohol" in N.M.'s hospital room, L.J.M. offered "one of the staff members a drink," and L.J.M. fell asleep "standing up at the desk." When hospital staff confronted L.J.M., she denied having a drinking problem and stated that she had been drinking because of a death in the family. The county offered L.J.M. services and she agreed to work with the county voluntarily. L.J.M. did not follow through with services.

In October 2015, L.J.M.'s neighbor called 911 and reported that L.J.M. was driving "at a high rate of speed with a child in her lap." Police officers went to L.J.M.'s home and L.J.M. admitted that she had driven with D.M. on her lap, but stated that she controlled the gas and brake pedals, while D.M. steered the vehicle. While talking to L.J.M., all three responding officers "detect[ed] an odor of consumed alcoholic beverage," but did not think that she was too intoxicated to care for the children.

In March 2016, police officers responded to L.J.M.'s home because a caller reported that L.J.M.'s boyfriend "verbally and physically" abused L.J.M. and the children. The

children told the police that the boyfriend threatened to hit them, and that they were afraid. Police arrested the boyfriend for fifth-degree domestic assault. At around the same time, D.M. told his teachers that the boyfriend drove him to school with a beer in his hand.

Later that same month, the county received a report that L.J.M. was noticeably intoxicated when she dropped the children off at school. According to witnesses from the school, L.J.M. shouted at staff, skipped down the hallway, and "appeared intoxicated." On that same day, N.M.'s teachers noticed a "bite mark" on N.M.'s cheek and N.M. said that D.M. bit her. After "some prompting," D.M. admitted that he bit N.M. the previous night. D.M. said that L.J.M. was home when the incident occurred, but had been "too drunk" to help them.

Police officers conducted a welfare check at L.J.M.'s home that evening and noticed a strong odor of alcohol when they spoke to L.J.M. The officers asked L.J.M. to submit to a preliminary breath test (PBT), which she did, with a reading of 0.28. The officers also saw the bite mark on N.M.'s cheek. L.J.M. told police that it was lip stick and tried to wipe it off. The officers reported their findings to the county, and the county put the children on a 72-hour hold and placed them in foster care.

In April 2016, the county filed a child in need of protection or services (CHIPS) petition, and both children were adjudicated in need of protection or services. At the CHIPS hearing, L.J.M. admitted that "she might have a problem with alcohol." As part of the CHIPS adjudication, the court ordered L.J.M. to cooperate with a chemical-dependency evaluation, a psychological evaluation, to have no use of alcohol and mood-altering chemicals, and to provide urinalysis (UA) as requested by the county. At the time of the

CHIPS adjudication, L.J.M. had not brought D.M. to therapy for approximately one year. Additionally, N.M. was not receiving speech, occupational, and physical therapy, was not using the recommended eye patch to strengthen her vision, and had not been to a follow-up appointment with her ophthalmologist.

At a disposition hearing in May 2016, the district court approved a case plan that addressed three primary areas to support reunification: (1) L.J.M.'s chemical use; (2) L.J.M.'s mental health; and (3) necessary medical and other services for the children. L.J.M. had completed a chemical-dependency evaluation, which recommended outpatient treatment and addiction support group meetings on a daily basis. The case plan also identified services to help L.J.M. provide a safe home for the children.

L.J.M. made minimal progress on her case plan from April to September 2016. L.J.M. had a diluted UA in May 2016, and did not complete any UAs in June or July 2016. L.J.M. missed visits with the children, and on one occasion, brought B.M., the children's biological mother, to a visit, even though B.M. is not allowed to see the children without previous authorization from the county. The unauthorized visit with B.M. upset the children.

The county filed a termination of parental rights (TPR) petition on September 22, 2016. After the termination petition was filed, L.J.M. became more engaged with her case plan. L.J.M. completed a psychological evaluation, attended individual therapy, and completed the required UAs, which were all negative. L.J.M. also actively participated in the children's services, including attending N.M.'s cranial surgery in November 2016. Based on L.J.M.'s cooperation and progress, the parties agreed to, and the district court

granted, a continuance of the TPR trial, and the children were reunified with L.J.M. for a trial home visit in January 2017.

The trial home visit was "short lived," and unsupervised visits were suspended on February 2, 2017. The county reported that L.J.M. missed two UAs and tested positive for alcohol in January.[1] Additionally, the children missed therapy sessions and several days of school. The county also received reports that L.J.M.'s boyfriend and B.M. had been at the home with the children. Finally, L.J.M. failed to provide the county with attendance slips from Alcoholics Anonymous (AA) meetings.

L.J.M. completed an updated chemical-dependency evaluation, which recommended "intensive" outpatient treatment, and L.J.M. entered a treatment program. In March 2017, the county filed an amended termination petition; L.J.M. entered an admission on the original TPR and the petition was stayed contingent on several conditions. L.J.M. substantially complied with the conditions: she continued the treatment program, attended individual counseling and three to four AA meetings per week, and provided negative UAs.

Around this time, D.M. was experiencing difficulties in foster care and at school, and wanted to live with L.J.M. The county reported that D.M. got into fights at the foster home, stole from his foster mother, and put a knife under his pillow on a few occasions. D.M. was not able to maintain "any time in his primary general classroom" because of his behaviors, and "social interactions were not going well." The county found that L.J.M. was

[1] L.J.M.'s testimony offered two explanations for the positive UA. First, she stated that she soaked her foot in rubbing alcohol, and second, she said that she had consumed Nyquil.

compliant with the case plan and stay conditions, and the children were reunified with L.J.M. in June 2017. The stayed TPR petition was dismissed in June 2017.

L.J.M. was discharged from the outpatient treatment program in August 2017, for not successfully completing the family portion of the treatment and "excessive absences." L.J.M. missed several therapy and treatment sessions, and missed UAs in July and August. L.J.M. also failed to take N.M. to several therapy appointments in June and August 2017, and L.J.M. failed to arrange for a personal care attendant to care for N.M., which the county had recommended. In late August 2017, L.J.M. missed another UA, and called the county to inform them that she and the children were going to Wisconsin to visit her brother. The county requested that police in Wisconsin complete a welfare check. The officers reported that L.J.M. smelled of alcohol, and L.J.M. told officers that she had a vodka drink at a bowling alley. Later, L.J.M. denied that she had been drinking and stated that a drink had been spilled on her.

In October 2017, L.J.M. called the police and reported that D.M. and N.M. were missing. L.J.M. provided police officers with photos and the officers searched the area. The officers also called the school and learned that D.M. and N.M. were at school. L.J.M. told the officers that she called 911 because her neighbor told her that he saw the children getting on a different bus. L.J.M. admitted drinking, and stated that she drank because she was stressed and could not find a job. The officers obtained a PBT from L.J.M., with a test result of 0.191. The children were again removed from the home.

On October 26, 2017, the county filed a new TPR petition, which alleged that L.J.M.'s parental rights should be terminated on the following statutory bases: Minn. Stat.

§ 260C.301, subd. 1(b)(2) (2016) (parent failed to satisfy the duties of the parent-child relationship); Minn. Stat. § 260C.301, subd. 1(b)(4) (2016) (parent is palpably unfit to be a party to the parent and child relationship); and Minn. Stat. § 260C.301, subd. 1(b)(5) (2016) (reasonable efforts failed to correct the conditions leading to the out-of-home placement).[2]

L.J.M. completed a new chemical-dependency evaluation, which recommended that she complete inpatient treatment. L.J.M. did not agree with this recommendation, and completed a second evaluation in November which also recommended inpatient treatment. L.J.M. entered an inpatient treatment program, and completed the program in December 2017. The discharge summary stated that L.J.M. minimized her drinking problem and relapses, lacked insight into her chemical use, and remained guarded. L.J.M. also entered an outpatient program in January 2018 and completed a UA which was positive for ethyl alcohol.

When the children were removed from L.J.M. in October, they were placed with a foster family in Anoka County. D.M.'s behavioral issues increased, and he told the county that he was angry about being removed from his grandmother. D.M. was depressed and had acted out aggressively. After D.M. moved to another foster home, his behaviors improved, he developed a good relationship with the new foster parents, and began to do

[2] On February 9, 2018, the county filed an amended termination petition. The amended petition added a statutory basis for termination, asserting that the district court should also terminate under Minn. Stat. § 260C.301, subd. 1(b)(8) (2016) (children were neglected and in foster care).

better in school. N.M. adjusted well to the first foster home and is still in that placement. N.M. receives daily therapy, and has made "a lot of progress" in her speech and vocabulary. The children have weekly visits with L.J.M. and these visits have been successful, but D.M. "really struggle[s]" with the "end of the visits" and has "meltdowns."

The termination trial took place over several months, beginning in late February 2018. The county provided testimony outlining the facts as described above. L.J.M. testified that she is an alcoholic and has been sober since October 23, 2017. L.J.M. explained that she now has the skills and ability to stay sober and she continues to attend AA meetings and therapy. L.J.M. testified that she did not drink during the trip to Wisconsin, but told the police that she had been drinking because she thought that was what the officer wanted to hear. L.J.M. also testified that she has several health conditions, including diabetes, which have caused her to miss therapy and treatment appointments. And L.J.M. testified that the positive UA in January 2018 was caused by her diabetes and high glucose level.

L.J.M.'s medical provider testified that drinking extra water may cause diluted UAs. The medical provider also explained that, because L.J.M.'s medications can cause dry mouth, she is encouraged to drink more water to prevent dehydration. Additionally, the medical provider testified that a positive alcohol test may result "if someone has uncontrolled diabetes because of glucose that spills in the urine," and that this could explain L.J.M.'s positive UA in January 2018.

The district court terminated L.J.M.'s parental rights on May 21, 2018. The district court did not find L.J.M.'s testimony credible. The court determined that L.J.M. failed to

acknowledge many of her relapses, did not report them to the chemical-dependency evaluators, and did not understand the impact that her drinking had on the children. The district court stated that L.J.M.'s "pattern of conduct is well-documented throughout the CHIPS case. [L.J.M.] complies with her case plan and is able to provide consistent, negative UAs for a couple of months before relapsing and putting the children's safety and well-being in jeopardy." The district court also found that L.J.M. failed to follow through with obtaining necessary services for the children. The district court concluded that the proceedings had been difficult for the children, and that D.M. needed "certainty and stability."

The district court found that county had made reasonable efforts to rehabilitate and reunify the family. The district court also concluded that the following statutory grounds existed to terminate parental rights: L.J.M. failed to comply with the duties imposed by the parent-child relationship; L.J.M. is palpably unfit to be a party to the parent-children relationship; and reasonable efforts failed to correct the conditions leading to the children's out-of-home placement. Finally, the district court concluded that termination was in the children's best interests. L.J.M. appeals.

D E C I S I O N

This court will affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We "review the district court's findings to determine whether they

address the statutory criteria for termination of parental rights and are not clearly erroneous." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* at 660-61 (quotation omitted). "Nevertheless, [an appellate court] defer[s] to the district court's decision to terminate parental rights." *Id.* at 661. "[I]f at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child's best interests, [an appellate court] will affirm." *Id.*

L.J.M. does not challenge the district court's determination that statutory grounds support the termination of her parental rights or that the county made reasonable efforts to rehabilitate and reunite the family. Rather, she challenges only the district court's best-interests determination. This court reviews the district court's determination that termination is in the children's best interest for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

In every termination-of-parental-rights proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016). Even if a statutory ground for termination exists, the district court must also make a specific finding that termination of parental rights is in the child's best interests. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). To determine the child's best interests, the district court "shall analyze: (i) the child's interests in preserving the parent-child relationship; (ii) the parent's interests in preserving the parent-child relationship; and

(iii) any competing interests of the child." Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *J.R.B.*, 805 N.W.2d at 905. "Competing interests include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of J.L.L.*, 801 N.W.2d 405, 414 (Minn. App. 2011), *review denied* (Minn. July 28, 2011).

Here, the district court explicitly applied each of the three best-interest factors and specifically found that termination is in the best interests of both children. First, the district court found that both children and L.J.M. have an interest in preserving the parent-child relationship. The court found that there is "a bond and love between [L.J.M.] and the children." The court also found, however, that the children have competing interests in "being safe, being cared for in a stable environment, and having their mental, emotional, physical, and medical needs met. These interests will not be met should the children remain in [L.J.M.'s] care." Finally, the district court concluded that county workers who provided services to the family "credibly testified" that termination is in the children's best interests.

L.J.M. does not challenge the district court's best-interests determination for N.M. Instead, L.J.M. narrowly argues that the district court did not acknowledge D.M.'s preference when it weighed the best-interest factors. L.J.M. points to testimony from several witnesses that D.M. wanted to return to L.J.M's care. For example, D.M.'s therapist testified that D.M. has struggled behaviorally and emotionally since being separated from L.J.M., and the lack of stability has been difficult for D.M. D.M.'s therapist also testified that D.M. wanted "to return to his grandma and go back home." D.M.'s teachers testified that D.M. identified L.J.M. as a very important person in his life and that D.M. worried that he would not be able to "go back with Grandma." The guardian ad litem testified that

D.M. would like to live with L.J.M., and that the children have a strong relationship with L.J.M. L.J.M. argues that D.M.'s desire to return to L.J.M. is not reflected in the district court's findings, and therefore, the court did not correctly weigh the best-interest factors.

We conclude that the district court adequately considered D.M.'s preferences for three reasons. First, the district court considered D.M.'s desire to return to L.J.M. because its order acknowledged that D.M. has a strong bond with L.J.M., it has been difficult for D.M. to wait while the trial is pending, and D.M. worries "a lot about his grandmother and his sister." In fact, the district court explicitly found that D.M. has a strong interest and desire to preserve the parent-child relationship.

Second, in considering the competing interests of a child, the district court must consider not only the child's preferences, but also the parent's ability to provide a stable environment. *J.L.L.*, 801 N.W.2d at 414. Here, the district court found that L.J.M. was not able to provide a stable environment for either child. Specifically, the district court found that both children were in need of mental-health and medical services and that L.J.M. failed to arrange and follow through with the necessary services. The court also found that the children needed "certainty and stability" in their home life, which L.J.M. was not able to provide. The district court weighed the competing interests, including D.M.'s desire to return to L.J.M., and determined that termination is in the children's best interests.

Finally, children involved in juvenile protection proceedings are entitled to effective assistance of counsel.[3] *See* Minn. Stat. § 260C.163, subd. 3(b) (Supp. 2017). If the child

[3] We note that Minn. Stat. § 260C.163, subd. 3, has an exception that is not at issue in this case.

"desires counsel but is unable to employ it, the court shall appoint counsel." *Id.* Here, the district court appointed an attorney for the children, and the attorney was present at the termination trial. The children's attorney had the opportunity to examine witnesses, present evidence, and argue D.M.'s interests to the court. Thus, we are not persuaded by L.J.M.'s argument that the district court did not *sufficiently* consider D.M.'s wishes.

Based on our review of the record, we conclude that the district court followed the statute's requirements, applied the law correctly, and sufficiently considered D.M.'s preferences. Because the record supports the district court's best-interests determination, we affirm.

Affirmed.